

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,
v.
THE CHILDREN'S INTERNET, INC., et al.
Defendants.

No. C 06-6003 CW
ORDER DETERMINING
REMEDIES FOR
DEFENDANTS'
VIOLATIONS OF THE
SECURITIES LAWS

The SEC has moved for the imposition of remedies against Defendants The Children's Internet, Inc. (TCI), Two Dog Net, Inc. (TDN), Nasser Hamedani, Sholeh Hamedani and Cort Poyner for their violations of the securities laws. Defendants oppose the remedies sought by the SEC. The matter was heard on August 14, 2008. Having considered oral argument and all of the papers submitted by the parties, the Court orders the remedies set forth herein.

BACKGROUND

The complaint charges Defendants with violating multiple provisions of the federal securities laws in connection with the unlawful sale of TCI securities. The SEC reached an agreement with TCI, TDN and the Hamedanis that obviated the need for a trial on the merits. Pursuant to the agreement, these Defendants agreed not

1 to contest liability and consented to the Court conducting a
2 hearing to determine the appropriate remedies for their violations.
3 Defendants agreed that, in the course of the remedies proceeding,
4 they would be "precluded from arguing that [they] did not violate
5 the federal securities laws as alleged in the Complaint" and that
6 the "allegations of the Complaint shall be accepted as and deemed
7 true by the Court." See, e.g., Docket No. 143 (consent of Nasser
8 Hamedani) at 2. The Court thus accepts the allegations in the
9 complaint as true for the purposes of this motion. The SEC was not
10 able to reach a negotiated settlement with Poyner, and the claims
11 against him went to trial. A jury found Poyner liable on all of
12 the claims asserted against him.

13 TDN is a privately held corporation controlled by the
14 Hamedanis. It aims to develop an internet portal for use by
15 children. In early 2002, the Hamedanis executed a plan to raise
16 capital for TDN's operations by obtaining public investments.
17 Rather than make an initial public offering of TDN shares, they
18 decided to purchase a shell company which had no operations but had
19 existing common stock that could be publicly traded. The Hamedanis
20 planned to raise capital by selling shares of the shell company to
21 investors. The shell company would then obtain a license to TDN's
22 software.

23 Poyner, an associate of the Hamedanis with experience in
24 raising capital for businesses, located a suitable shell company
25 named DWC Installations. He brought DWC to the Hamedanis'
26 attention in January or February, 2002. Poyner stated that DWC had
27 over 1.1 million shares that could be publicly sold without delay.

1 The Hamedanis created a corporation named Shadrack Films, with
2 Sholeh Hamedani as its sole shareholder, to acquire fifty-one
3 percent of DWC's stock in July, 2002 for approximately \$150,000.
4 After designating Sholeh Hamedani DWC's sole officer and appointing
5 relatives and associates to DWC's board of directors, the Hamedanis
6 arranged for the acquisition of nearly all the remaining DWC stock
7 by "nominees" under their control, including Nasser Hamedani's
8 daughter, Soraiya Hamedani, and his nephew, Farzin Cigarchi. In
9 December, 2002, the Hamedanis changed DWC's name to TCI. For his
10 role in helping the Hamedanis acquire DWC, Poyner was given 50,000
11 shares of TCI stock.

12 Defendants raised the money used to purchase DWC by selling
13 what they represented were shares of TCI, even though TCI did not
14 yet exist and Defendants had not yet purchased the shares they were
15 purporting to sell. By the time the Hamedanis made their first
16 acquisition of DWC shares in July, 2002, Defendants had already
17 sold more than 350,000 shares of TCI stock, at two dollars per
18 share, to more than forty individuals.

19 The Hamedanis and their associates raised \$2,722,344 from the
20 sale of TCI shares to investors (A-investors) between February,
21 2002 and January, 2005. Although these investors were told that
22 their TCI shares would be freely tradeable, these representations
23 were not true, because there was no public market for TCI shares
24 until February, 2005, when TCI first became publicly quoted on the
25 OTC Bulletin Board. A number of other misrepresentations were made
26 to investors to induce them to purchase TCI stock. In addition,
27 investors were not told that Poyner received up to a twenty-five
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1 percent commission, an unusually high amount.

2 Of the \$2,722,344 that was raised from A-investors, \$395,000
3 went to TCI's legitimate operating expenses; \$365,000 went to
4 brokers' commissions and TDN expenses; \$150,000 went toward the
5 purchase of DWC; and \$1.2 million went to a checking account used
6 by Nasser and Sholeh Hamedani for their personal expenses. The
7 Hamedanis claim that the \$1.2 million represents partial repayment
8 of the approximately \$2 million Nasser had previously loaned to the
9 company. Neither the complaint nor the SEC's papers state how the
10 remaining \$612,344 was spent and, at the hearing, the SEC stated
11 that these funds could not be traced.

12 The Hamedanis raised an additional \$752,700 from investors (B-
13 investors) between July, 2004 and June, 2005 through sales of what
14 the investors were told was TCI stock directly from the company.
15 The shares, however, were actually held and sold by Shadrack Films,
16 and thus did not serve to raise new capital for TCI. Nor did the
17 Hamedanis treat these proceeds as capital for TCI. Rather, they
18 treated them as their own personal funds.

19 As noted, TCI became listed on the OTC Bulletin Board and a
20 market was created for its stock in February, 2005. Prior to this,
21 TCI stock was not registered with the SEC, and Defendants' sales
22 before this date were therefore unlawful. After TCI stock was
23 listed, Defendants profited by selling shares of TCI stock they
24 already owned. Poyner sold the 50,000 shares of stock he had been
25 given in exchange for locating DWC, netting a profit of \$312,892.
26 Nasser Hamedani arranged for brokerage accounts to be opened in the
27 names of his daughter Soraiya and his nephew Cigarchi. Soraiya and
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1 Cigarchi then sold their shares before other investors had received
2 their stock certificates, which Nasser and Sholeh Hamedani
3 purposely delayed issuing, and thus were able to take advantage of
4 the relatively high share price during early trading while other
5 investors were not. Soraiya netted \$440,000 from her sales;
6 Cigarchi netted \$1.64 million from his. Of this amount, \$1.6
7 million was transferred to Nasser Hamedani and \$400,000 was given
8 to his relatives.¹

9 Defendants are now charged with, among other things, selling
10 securities as to which no registration statement had been filed
11 with the SEC; and making material misrepresentations and omissions
12 in connection with the sale of securities.

13 DISCUSSION

14 I. Remedies Against Poyner

15 After trial, the jury found Poyner liable for four violations
16 of the securities laws: 1) Section 15(a)(1) of the Securities
17 Exchange Act of 1934 (the Exchange Act), for acting as a securities
18 broker without registering as one; 2) Section 5 of the Securities
19 Act of 1933 (the Securities Act), for selling unregistered TCI
20 securities; 3) Section 10(b) and Rule 10b-5 of the Exchange Act,
21 for making material false or misleading statements or omissions in
22 connection with the sale of TCI securities; and 4) Section 17(a)(1)
23 of the Securities Act, also for making material false or misleading
24 statements or omissions in connection with the sale of securities.
25 The SEC now seeks disgorgement of Poyner's gains from his

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27 ¹The complaint does not account for the remaining \$80,000.

1 involvement in raising funds for TCI. It also seeks civil
2 penalties and an injunction prohibiting Poyner from violating the
3 securities laws in the future and from participating in the
4 offering of penny stocks.

5 A. Disgorgement

6 District courts have "broad equity powers to order the
7 disgorgement of 'ill-gotten gains' obtained through the violation
8 of the securities laws." SEC v. First Pac. Bancorp, 142 F.3d 1186,
9 1191 (9th Cir. 1998). "Disgorgement is designed to deprive a
10 wrongdoer of unjust enrichment, and to deter others from violating
11 securities laws by making violations unprofitable." Id. The court
12 need not "trace every dollar" of the ill-gotten gains, but rather
13 may order disgorgement of a "reasonable approximation of profits
14 causally connected to the violation." Id. at 1192 n.6 (quoting
15 SEC v. First Jersey Sec. Inc., 101 F.3d 1450, 1475 (2d Cir. 1996)).

16 The SEC seeks disgorgement of Poyner's commissions and the
17 proceeds of his sales of TCI stock, an amount totaling \$413,767.
18 It also seeks pre-judgment interest on this sum in the amount of
19 \$61,118, for a total of \$474,885.

20 1. Poyner's Commissions

21 The SEC claims that the evidence at trial demonstrates that
22 Poyner was paid \$100,875 in commissions and fees from the sale of
23 TCI stock. This evidence consists of the SEC's expert witness, an
24 accountant, who arrived at the figure by identifying transfers to
25 Poyner from TDN and Shadrack Films during the relevant time period.

26 Poyner does not dispute that he earned \$100,875 in
27 commissions. Instead, he argues that the only commissions that
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1 should be disgorged are those from the sales of TCI stock to Daniel
2 Sidenberg and Rafael Caliendo, the only investors whose testimony
3 was offered at trial.² He maintains that these are the only
4 transactions for which the jury could have concluded that he acted
5 as a broker, rather than a finder. (Section 15(a)(1) of the
6 Exchange Act does not require an individual to register as a
7 securities broker if he acts only as a "finder.") Poyner also
8 suggests that the jury could not have found that he made
9 misrepresentations or omissions to any investors other than
10 Sidenberg and Caliendo.

11 Poyner's arguments against disgorging the full \$100,875 are
12 not persuasive. The SEC's charges against Poyner at trial were not
13 limited to violations in connection with the sales to Sidenberg and
14 Caliendo; these investors gave testimony that was representative of
15 other investors. The fact that the jury found Poyner generally
16 liable for violations of the securities laws implies that it
17 concluded he was liable for his involvement in all of the sales of
18 TCI stock that were proved at the trial, not just the sales to
19 Sidenberg and Caliendo. In addition, it is undisputed that none of
20 the TCI shares were registered at the time they were sold. Whether
21 Poyner was acting as a finder or a broker, and whether he made
22 misrepresentations or omissions, is irrelevant to this claim. This
23 claim alone can serve as the basis for disgorging the entire amount
24 of Poyner's profits. Thus, the full \$100,875 in Poyner's
25 commissions will be disgorged.

26
27 ²The SEC introduced Sidenberg's and Caliendo's testimony in
the form of a videotaped deposition.

2. Poyner's Sale of TCI Stock

As noted above, Poyner received 50,000 TCI shares as compensation for finding DWC for the Hamedanis. Poyner sold these shares after TCI stock started trading, netting \$312,892. This figure is supported by the declaration of an SEC accountant who analyzed confirmation slips from the trades.

Poyner argues that finding DWC for the Hamedanis was not itself a violation of the securities laws, and thus the shares he was given in exchange should not be subject to disgorgement. The SEC correctly notes, however, that the purchase of DWC was an integral part of the fraudulent scheme to raise capital through illegal stock sales. Poyner's profits from his involvement in the scheme are subject to disgorgement, and thus the net proceeds from his sales will be disgorged.³

3. Pre-Judgment Interest

The SEC seeks pre-judgment interest in the amount of \$61,118. It has submitted a declaration from its accountant explaining how this figure was calculated. Poyner does not contend that the calculation is incorrect, but he argues that it would be unjust to award pre-judgment interest, given that the SEC took six years from the time of the violations to bring this matter to judgment. However, the length of time between Poyner's violations and the judgment against him is not relevant to the issue of whether he

³Poyner argues that, if disgorgement is ordered, the Court should disgorge only \$100,000, the value of the TCI shares at the time Poyner received them. But Poyner benefitted by selling the shares at a price far above their initial value, and he is not entitled to keep the profit.

1 should pay pre-judgment interest. The purpose of awarding pre-
2 judgment interest here is to prevent Poyner from keeping the
3 interest he earned (or could have earned) by investing the funds
4 that are now subject to disgorgement, and thereby benefitting from
5 his violations. Accordingly, Poyner will be assessed pre-judgment
6 interest in the amount of \$61,118.

7 B. Civil Penalties

8 Under the Exchange Act, the Court may impose a civil penalty
9 for Poyner's violations. 15 U.S.C. § 78u(d)(3)(A). The maximum
10 amount of the penalty depends on which of three tiers the violation
11 falls within:

12 (i) First tier

13 The amount of the penalty shall be determined by the
14 court in light of the facts and circumstances. For each
15 violation, the amount of the penalty shall not exceed the
16 greater of (I) \$5,000 for a natural person or \$50,000 for
any other person, or (II) the gross amount of pecuniary
gain to such defendant as a result of the violation.

17 (ii) Second tier

18 Notwithstanding clause (i), the amount of penalty for
each such violation shall not exceed the greater of (I)
\$50,000 for a natural person or \$250,000 for any other
19 person, or (II) the gross amount of pecuniary gain to
such defendant as a result of the violation, if the
20 violation described in subparagraph (A) involved fraud,
deceit, manipulation, or deliberate or reckless disregard
21 of a regulatory requirement.

22 (iii) Third tier

23 Notwithstanding clauses (i) and (ii), the amount of
penalty for each such violation shall not exceed the
24 greater of (I) \$100,000 for a natural person or \$500,000
for any other person, or (II) the gross amount of
25 pecuniary gain to such defendant as a result of the
violation, if--

26 (aa) the violation described in subparagraph (A)
27 involved fraud, deceit, manipulation, or deliberate

1 or reckless disregard of a regulatory requirement;
2 and

3 (bb) such violation directly or indirectly resulted
4 in substantial losses or created a significant risk
5 of substantial losses to other persons.

6 Id. § 78u(d)(3)(B). The same scheme governs civil penalties for
7 violations of the Securities Act. See 15 U.S.C. § 77t(d)(2). The
8 fines for individuals increased to \$6,500, \$60,000 and \$120,000 in
9 2001 to account for inflation. See 17 C.F.R. § 201.1002.

10 The SEC seeks civil penalties against Poyner in the amount of
11 \$120,000, representing a \$30,000 penalty for each of the four
12 securities laws Poyner was found to have violated. The SEC
13 contends that all four of Poyner's violations fall within Tier II
14 because they involve "fraud, deceit, manipulation, or deliberate or
15 reckless disregard of a regulatory requirement." This position is
16 supported by the jury's verdict. In addition, unless civil
17 penalties are imposed, Poyner will not have incurred any meaningful
18 economic cost as a result of his violations; he merely will have
19 been stripped of his ill-gotten gains. Accordingly, the Court will
20 impose civil penalties against Poyner in the amount of \$120,000.

21 C. Injunctive Relief

22 1. Prohibition on Violating the Securities Laws

23 The Exchange Act provides:

24 Whenever it shall appear to the Commission that any
25 person is engaged or is about to engage in acts or
26 practices constituting a violation of any provision of
27 this chapter, . . . it may in its discretion bring an
28 action in the proper district court of the United States
to enjoin such acts or practices, and upon a proper
showing a permanent or temporary injunction or
restraining order shall be granted without bond.

1 15 U.S.C. § 78u(d)(1).⁴ The Securities Act contains language that
2 is identical in all material respects. Id. § 77t(b).

3 The SEC seeks an injunction that would prohibit Poyner from
4 again violating the securities laws he was found to have violated
5 by the conduct that is the subject of this action. In SEC v. Fehn,
6 97 F.3d 1276 (9th Cir. 1996), the Ninth Circuit addressed when an
7 injunction of the type the SEC seeks is appropriate:

8 To obtain a permanent injunction, the SEC ha[s] the
9 burden of showing there [is] a reasonable likelihood of
10 future violations of the securities laws. We acknowledge
11 that there is no per se rule requiring the issuance of an
12 injunction upon the showing of a past violation, but
13 . . . the existence of past violations may give rise to
14 an inference that there will be future violations; and
15 the fact that the defendant is currently complying with
16 the securities laws does not preclude an injunction.

17 In predicting the likelihood of future violations, we
18 must assess the totality of the circumstances surrounding
19 the defendant and his violations, and we consider such
20 factors as (1) the degree of scienter involved; (2) the
21 isolated or recurrent nature of the infraction; (3) the
22 defendant's recognition of the wrongful nature of his
23 conduct; (4) the likelihood, because of defendant's
24 professional occupation, that future violations might
25 occur; (5) and the sincerity of his assurances against
26 future violations.

27 Id. at 1295-96. (citations and internal quotation marks omitted).

28 Considering these factors, the Court concludes that there is a
reasonable likelihood that Poyner will violate the securities laws
in the future, and thus an injunction is appropriate. Poyner's
violations were not isolated, but were ongoing and made with
scienter. Poyner has shown no recognition of the wrongfulness of

⁴The Exchange Act further provides, "Upon application of the
Commission the district courts of the United States . . . shall
have jurisdiction to issue . . . injunctions . . . commanding . . .
any person to comply with the provisions of this chapter." Id.
§ 78u(e).

1 his conduct, and the fact that he is in the business of raising
2 capital and thus is in a good position to defraud others in the
3 future provides particular cause for concern. Accordingly, the
4 Court will enjoin Poyner from violating the securities laws in the
5 future.

6 2. Prohibition on Future Sales of Penny Stocks

7 The SEC also seeks to prohibit Poyner from dealing in "penny
8 stocks," i.e., stocks that sell for less than five dollars. This
9 request finds support in the Exchange Act, which provides:

10 In any proceeding under paragraph (1) against any person
11 participating in, or, at the time of the alleged
12 misconduct who was participating in, an offering of penny
13 stock, the court may prohibit that person from
14 participating in an offering of penny stock,
15 conditionally or unconditionally, and permanently or for
16 such period of time as the court shall determine.

17 15 U.S.C. § 78u(d)(6). The House Report on the Penny Stock Reform
18 Act of 1990, which added the precursor of this provision, found
19 that widespread abuses in the market for penny stocks called for
20 increased regulation:

21 Because it is wrapped in secrecy and operates in relative
22 obscurity, the penny stock market lends itself to
23 manipulation far more easily than a market where
24 information is readily available and circulated to
25 investors. Penny stocks are often thinly traded and this
26 more readily facilitates control and domination by a
27 single market maker. The securities thus become
28 attractive vehicles for manipulative, artificial schemes
which are intended to raise the price or volume of the
securities, primarily for the benefit of the few
anonymous insiders, and frequently, the brokerage firm
itself, which often unloads its own shares of the stock
into the market after it has manipulated the price of the
stock skyward.

H.R. Rep. No. 101-617 (1990), reprinted in 1990 U.S.C.C.A.N. 1408,
1422.

1 The concerns raised by Congress are relevant here. Given
2 Poyner's involvement in raising funds through the sale of penny
3 stock and his continuing activity in corporate finance (in
4 particular, his involvement in a fitness beverage venture) the
5 SEC's request is reasonable. Accordingly, the Court will enter an
6 injunction prohibiting Poyner from further dealing in penny stocks.

7 II. Remedies Against the Hamedanis, TCI and TDN

8 The SEC seeks disgorgement against the Hamedanis, TCI and TDN.
9 It also seeks civil penalties against the Hamedanis and an
10 injunction prohibiting them from acting as officers or directors of
11 publicly reporting corporations in the future and from
12 participating in the offering of penny stocks.

13 A. Disgorgement

14 The SEC seeks disgorgement in the amount of \$5,555,044 from
15 Nasser and Sholeh Hamedani, jointly and severally. It also seeks
16 to hold TCI jointly and severally liable for \$3,475,044 of this
17 amount and to hold TDN jointly and severally liable for \$2,722,344
18 of the amount.

19 1. Disgorgement of the Hamedanis' Gains

20 The SEC seeks disgorgement of \$5,555,044 against the
21 Hamedanis, corresponding to the proceeds from the sales of TCI
22 stock to A-investors and B-investors and the sales of Soraiya's and
23 Cigarchi's shares of TCI stock. This figure, however, does not
24 approximate the gains actually received by the Hamedanis.
25 According to the allegations in the complaint, the Hamedanis did
26 not keep the entire \$5,555,044 million for themselves; some of the
27 funds that were raised were spent on TCI's expenses and on other

1 items. A more reasonable approximation of the Hamedanis' ill-
2 gotten gains is \$3,552,700. This amount equals the sum of: 1) the
3 \$1.2 million of A-investor funds diverted to their checking
4 account; 2) \$752,700, representing the entire amount of B-investor
5 funds, which the Hamedanis treated as their own; and 3) the \$1.6
6 million given to them from the sale of Soraiya's and Cigarchi's
7 stock sales.

8 The Hamedanis argue that the \$1.2 million they diverted from
9 A-investor funds was actually repayment of a loan that Nasser had
10 given to TCI. Even accepting this as true, however, the complaint
11 alleges that the transfer was improper and not in line with
12 investors' expectations, and thus this amount should be disgorged.
13 The Hamedanis also claim that the \$1.6 million they received from
14 the sale of Soraiya's and Cigarchi's shares was actually a loan
15 that they must repay. They have submitted promissory notes
16 supporting this allegation. The complaint, however, states that
17 Nasser controlled the sale of these shares and received the
18 proceeds himself. These allegations strongly imply that the \$1.6
19 million was not a bona fide loan.

20 The Hamedanis also note that many of the shares of TCI stock
21 sold through the accounts of Soraiya and Cigarchi were actually
22 sold after other investors had received their stock certificates
23 and could trade their shares. The SEC does not dispute this, but
24 correctly points out that the sale of these shares was part of an
25 overarching scheme by the Hamedanis to make money for themselves
26 through the sale of TCI stock. Allowing the Hamedanis to keep the
27 proceeds would enable them to benefit from their manipulation of
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1 the market.

2 The Hamedanis argue that TCI's operating expenses should be
3 subtracted from the gross revenue when calculating disgorgement.
4 However, their submissions concerning TCI's expenses cannot be
5 reconciled with the complaint, which states that, of the money
6 raised from A-investors and B-investors, only \$395,000 went toward
7 legitimate business expenses. The Court has not included this
8 amount in calculating disgorgement. Nor has the Court included the
9 \$365,000 that was spent on brokers' commissions and TDN expenses,
10 the \$150,000 that was used for the initial purchase of DWC or the
11 \$612,344 that is unaccounted for in the complaint. To the extent
12 the Hamedanis submit that the \$3,552,700 was used to pay for
13 legitimate operating expenses, their allegations are contradicted
14 by the complaint and are not properly asserted. Accordingly, the
15 Court orders disgorgement of \$3,552,700 from the Hamedanis.

16 The SEC also seeks to disgorge the TCI shares still owned by
17 Sholeh Hamedani through Shadrack Films and the TDN shares owned by
18 Nasser Hamedani. Currently, these shares are worth little.
19 However, if TCI is eventually developed into a successful business,
20 the Hamedanis could profit from their involvement in the TCI
21 venture, notwithstanding their violations of the securities laws,
22 by virtue of their continued financial stake in the companies.
23 Accordingly, to prevent the Hamedanis from receiving such ill-
24 gotten gains in the future, these shares will be disgorged. The
25 shares must be deposited in a brokerage account. The respective
26 corporations' boards and remaining shareholders may determine how
27 to dispose of the shares, but must seek the Court's approval of any
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1 disposition. For purposes of establishing a quorum at a
2 shareholder meeting, the disgorged shares shall be deemed present
3 but not voting.

4 2. Disgorgement of TCI's and TDN's Gains

5 The SEC seeks to disgorge \$3,475,044 from TCI, representing
6 the funds raised from A-investors and B-investors. However, the
7 \$752,700 in B-investor funds was given to Shadrack Films and
8 treated by the Hamedanis as if it was their own. TCI therefore did
9 not benefit from these funds, and they are already being disgorged
10 from the Hamedanis. In addition, of the \$2,722,344 raised from A-
11 investors, \$1.2 million was deposited in the Hamedanis' checking
12 account and was used for their personal expenses. These funds also
13 did not benefit TCI, and are subject to disgorgement already.

14 Of the remaining \$1,522,344 in A-investor funds, the complaint
15 alleges that \$395,000 went to legitimate TCI operating expenses,
16 \$150,000 went toward the purchase of DWC installations and \$365,000
17 went to brokers' commissions and TDN's expenses. As noted above,
18 the complaint does not account for the remaining \$612,344 in
19 investor funds. While some of these funds could potentially be
20 subject to disgorgement, ordering disgorgement against TCI would
21 not benefit the corporation's shareholders, who are the victims of
22 the Hamedanis' unlawful conduct. Nor does it appear that TCI would
23 have the means to satisfy any order of disgorgement.

24 The SEC also seeks disgorgement from TDN of the \$2,722,344
25 raised from A-investors, on the basis that those investors
26 allegedly sent their payments to TDN. But even so, this does not
27 demonstrate that TDN benefitted from its receipt of the funds. To

1 the contrary, the complaint specifies that only a small amount of
2 these funds -- an unspecified portion of \$365,000 -- went toward
3 TDN's operating expenses. Although this amount could potentially
4 be disgorged, doing so would penalize third party TDN shareholders
5 who were not responsible for the violations.

6 The Court concludes that ordering disgorgement only against
7 the Hamedanis individually and divesting them of their interest in
8 TCI and TDN is the most appropriate remedy under the circumstances.
9 This approach will offer TCI's shareholders the best hope of
10 realizing a return on their investment. Accordingly, the Court
11 will not order disgorgement against TCI or TDN.

12 3. Pre-Judgment Interest

13 For the reasons discussed above, the Hamedanis must pay pre-
14 judgment interest on any funds that are disgorged. The SEC's
15 calculation of interest, however, is based on the amount of
16 disgorgement it requested, not on the amount determined by the
17 Court. The SEC must therefore recalculate the amount of pre-
18 judgment interest owed by the Hamedanis based on disgorgement in
19 the amount of \$3,552,700. If the Hamedanis dispute the
20 calculation, they may seek relief from the Court.

21 B. Civil Penalties

22 As with Poyner, the SEC seeks the imposition of civil
23 penalties against the Hamedanis. The three-tiered system discussed
24 above applies to these penalties. The SEC argues that the
25 Hamedanis' violations fall within Tier III because they involved
26 "fraud, deceit, manipulation or deliberate or reckless disregard of
27 a regulatory requirement" and "directly or indirectly resulted in
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1 substantial losses or created a significant risk of substantial
2 losses to other persons." The SEC asks that the highest authorized
3 penalty of \$120,000 be imposed against each of the Hamedanis.

4 The Hamedanis disregarded fundamental principles of corporate
5 governance and demonstrated a willingness to enrich themselves at
6 the expense of their investors. The amount of any civil penalty
7 against them must reflect their serious violations of the
8 securities laws. Accordingly, the Court will impose a penalty of
9 \$100,000 against each of them. This amount is slightly less than
10 the statutory maximum because the Hamedanis have expressed regret
11 over the effects of their conduct on TCI shareholders.

12 C. Injunctive Relief

13 The SEC requests an injunction prohibiting the Hamedanis from
14 serving as officers or directors of any publicly reporting company.
15 Such a prohibition is appropriate given the reckless way in which
16 the Hamedanis have managed the affairs of TCI, and the Court will
17 therefore grant the SEC's request.

18 The SEC also requests that the Hamedanis be prohibited from
19 participating in the offering of penny stocks. Considering the
20 Hamedanis' manipulation of investors in connection with the
21 offering of penny stocks, this relief is also appropriate. The
22 Court will therefore grant this request as well.

23 CONCLUSION

24 For the foregoing reasons, the Court orders the following
25 remedies:

26 Defendant Cort Poyner shall pay to the SEC \$474,885 in
27 disgorgement and pre-judgment interest, and \$120,000 in civil

1 penalties. He shall be permanently enjoined from violating the
2 securities laws in the future and from dealing in penny stocks.

3 Defendants Nasser and Sholeh Hamedani shall pay to the SEC
4 \$3,552,700 in disgorgement, and pre-judgment interest in an amount
5 to be determined. They are jointly and severally liable for
6 payment of this sum. All TCI shares owned by Shadrack Films and
7 all TDN shares owned by Nasser Hamedani shall also be disgorged.
8 Nasser and Sholeh Hamedani shall each pay \$100,000 in civil
9 penalties. They shall be enjoined from acting as directors of any
10 publicly reporting company and from participating in the future
11 offering of penny stocks.

12 The SEC shall submit a proposed judgment and injunction(s)
13 within ten days of the date of this order.

14 IT IS SO ORDERED.

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16 Dated:10/03/08



17 CLAUDIA WILKEN
18 United States District Judge
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